

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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In the Matter of)

)
Amendment of Section 2.106 of the
Commission's Rules to Allocate
Spectrum at 2 GHz for Use
by the Mobile-Satellite Service)

)
ET Docket No. 95-18
RM-7927
PP-28

To: The Commission

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Federal Communications Commission
Office of Secretary

COMMENTS OF BELL SOUTH
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SUMMARY

In this docket, the Commission reaffirms that MSS is an emerging technology. As an emerging technology, MSS is subject to the principles and procedures established for clearing spectrum for the provision of services using the new technology. One of the fundamental principles underlying its decision to relocate incumbent 2 GHz licensees was that emerging technology providers pay all of the expenses associated with such relocation. Accordingly, BellSouth supports requiring Mobile-Satellite Service ("MSS") licensees to pay the costs associated with relocating incumbent Broadcast Auxiliary Service, Cable Television Relay Service, and Local Television Transmission Service (collectively "BAS") licensees.

In addition to requiring MSS licensees to pay all of the costs associated with clearing 2 GHz spectrum set aside for MSS use, the Commission should apply the remainder of its emerging technology spectrum clearing plan to MSS as follows:

- The Commission should conserve vacant 2 GHz spectrum by granting new BAS and Fixed Service ("FS") licenses only on a secondary basis;
- A two year voluntary negotiation period and one year mandatory negotiation period should be established;
- If no relocation agreement is reached at the conclusion of the negotiation periods, the incumbent BAS and FS licensees should be subject to involuntary relocation;
- Incumbent BAS and FS licensees should be permitted to operate on a co-primary basis during the voluntary and mandatory negotiation periods; and
- MSS licensees should be required to provide incumbent BAS and FS licensees with comparable facilities, as defined in WT Docket No. 95-157, and should be required to share the costs associated with clearing spectrum for MSS use.

Because interference standards have yet to be adopted, the Commission should not adopt detailed rules governing the mechanics of the MSS cost-sharing plan. Rather, the Commission should simply adopt a general rule specifying that all MSS licensees will be required to share the costs associated with clearing spectrum for MSS use.

Moreover, the Commission should sunset the relocation obligations of MSS licensees ten years after grant of the first MSS license. Existing 2 GHz equipment should be completely amortized after ten years and the useful life of such equipment is only fifteen years. Given that incumbent 2 GHz licensees have been on notice since 1992 that the 2 GHz band has been designated for use by emerging technologies and that incumbents will be forced to vacate the spectrum, BAS and FS licensees would not be significantly harmed by such a sunset.

BellSouth generally supports the Commission's proposal to rechannelize the new BAS band (2025-2130 MHz) into seven channels of 15 MHz. Given the propagation characteristics of FS in the 2110-2130 MHz band and the itinerant nature of BAS operations (such as mobile ENG operations), however, the Commission should not allow BAS operations to begin on the new band until all FS licensees have been relocated.

Finally, unlike the operations of BAS and FS over the same spectrum, MSS and FS licensees may operate on the same band without causing each other interference. Accordingly, there is no reason to require an MSS licensee to relocate an FS incumbent if the incumbent is not subject to interference from the MSS operations. For purposes of determining interference, the Commission should adopt the interference standards currently under development at TIA. Until these standards are adopted, however, an FS licensee should be entitled to relocation, with all costs borne by the MSS licensee, prior to commencement of MSS operations.

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To: The Commission

COMMENTS OF BELL SOUTH

BellSouth Corporation ("BellSouth"), on behalf of its wireless subsidiaries and affiliates, hereby submits comments in response to the Commission's *Further Notice of Proposed Rule Making* in the captioned docket. 62 Fed. Reg. 19538 (April 22, 1997).¹ As discussed below, BellSouth supports requiring Mobile-Satellite Service ("MSS") licensees to pay the costs associated with relocating incumbent Broadcast Auxiliary Service, Cable Television Relay Service, and Local Television Transmission Service (collectively "BAS") licensees.

I. MOBILE-SATELLITE SERVICE LICENSEES SHOULD BE REQUIRED TO PAY THE COSTS ASSOCIATED WITH RELOCATING INCUMBENT USERS

BellSouth supports the Commission's decision to require MSS operators to pay the costs of relocating BAS incumbents into new bands. *First Report* at ¶ 33; *see FNPRM* at ¶ 64. In March 1992, the World Administrative Radio Conference recognized that MSS was an emerging technology and allocated frequencies for the development of MSS.² Soon thereafter, the FCC

¹ *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, ET Docket No. 95-18, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 97-93 (March 14, 1997). Throughout its comments, BellSouth uses "*First Report*" when it is citing to the FCC's decision and "*FNPRM*" when it is referencing the *Further Notice*.

² *See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommu-*
(continued...)

also recognized MSS as an emerging technology.³ In order to facilitate the development of new technologies, such as MSS, the Commission reallocated much of the 2 GHz band for the provision of emerging technology services.⁴ The Commission established principles and procedures for relocating incumbent 2 GHz licensees to permit the provision of these new services.⁵ One of the fundamental principles underlying its decision to relocate incumbent 2 GHz licensees was that the emerging technology providers pay all of the expenses associated with such relocation.⁶

Consistent with this principle, the Commission decided to require MSS licensees to bear all costs associated with clearing the 1990-2025 MHz band of incumbent licensees. *First Report* at ¶ 33. Parties had ample opportunity to comment on this issue in both the *Emerging Technology* docket and the *NPRM* in this proceeding. Nowhere in the current *FNPRM* does the Commission undertake to re-examine this issue or consider comments on this established policy. Accordingly, comments opposing the FCC's decision to require MSS licensees to bear the costs of relocation are not timely and should be disregarded.

The *FNPRM* seeks comment only on the relocation procedures proposed in the *FNPRM*. BellSouth generally supports the Commission's proposals to the extent they mirror the proce-

² (...continued)
nications Technologies, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 F.C.C.R. 6886, 6887 (1992) ("*Emerging Technology Report*").

³ *Emerging Technology Report*, 7 F.C.C.R. at 6888, 6893; see also *First Report* at ¶ 15.

⁴ *Emerging Technology Report*, 7 F.C.C.R. at 6886.

⁵ *Emerging Technology Report*, 7 F.C.C.R. at 6886, 6890-92.

⁶ *Emerging Technology Report*, 7 F.C.C.R. at 6890.

dures adopted in the *Emerging Technology* docket, as modified in the *Microwave Cost-Sharing* docket.⁷

A. The Procedures Established in the *Emerging Technology* Docket Should Be Used for Relocating BAS and Fixed Service Incumbents

In this proceeding, the Commission has reaffirmed that MSS is an emerging technology. *First Report* at ¶¶ 13-15. As an emerging technology, MSS is subject to the spectrum redevelopment plan established in the *Emerging Technology* docket. This plan ensures that emerging technology licensees get access to the allocated spectrum within a reasonable time frame, yet prevents disruption of incumbent licensees and minimize the economic impact on existing licensees.⁸ This plan should be extended to MSS as follows:

- The Commission should conserve vacant spectrum at 1990-2025 MHz and 2175-2200 MHz by granting licenses for new BAS and Fixed Service ("FS") facilities only on a secondary basis;⁹
- A two year voluntary negotiation period should be established to encourage BAS and FS licensees to negotiate relocation terms with potential MSS licensees;¹⁰

⁷ See *Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, *First Report and Order and Further Notice of Proposed Rule Making*, 11 F.C.C.R. 8825 (1996) ("Cost Sharing Report"); *Second Report and Order*, 12 F.C.C.R. 2705 (1997).

⁸ See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, *Third Report and Order and Memorandum Opinion and Order*, 8 F.C.C.R. 6589 (1993) ("Third Report"); *Emerging Technology Report*, 7 F.C.C.R. at 6886.

⁹ See *Emerging Technology Report*, 7 F.C.C.R. at 6886.

¹⁰ See *Emerging Technology Report*, 7 F.C.C.R. at 6890; *Third Report*, 8 F.C.C.R. at 6589-90, 6595. Consistent with the procedures established in the *Emerging Technology* docket, a separate three year voluntary negotiation period should be established for public safety licensees. *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, *Second Memorandum Opinion and Order*, 9 F.C.C.R. 7797, 7802 (1994) ("Second MO&O").

- A one year mandatory negotiation period should be established whereby incumbent BAS and FS licensees that have not entered into relocation negotiations (or reached a final relocation agreement) with MSS licensees must negotiate relocation terms in good faith;¹¹
- If no relocation agreement is reached at the conclusion of the mandatory negotiation period, the incumbent BAS and FS licensees should be subject to involuntary relocation, provided
 - (1) All relocation expenses are paid by the MSS licensee;
 - (2) The replacement facilities are fully comparable to the 2 GHz facilities being replaced;
 - (3) All activities necessary for placing the new replacement facilities into operation must be completed before relocation; and
 - (4) The replacement facilities must be fully built and tested prior to relocation.¹²
- If an incumbent BAS or FS licensee is involuntarily relocated and the replacement facilities prove not to be comparable, the MSS licensee responsible for the involuntary relocation must pay to relocate the BAS/FS licensee to its original facilities;¹³ and
- Incumbent BAS and FS licensees should be permitted to operate on the spectrum designated for MSS use on a co-primary basis during the voluntary and mandatory negotiation periods.¹⁴

The Commission should adopt this plan as the vehicle for clearing spectrum for MSS operations, including the relocation of FS licensees from the 2110-2130 band to accommodate relocated BAS facilities.

¹¹ See *Emerging Technology Report*, 7 F.C.C.R. at 6890; *Third Report*, 8 F.C.C.R. at 6589-90, 6595. Public safety licensees should be entitled to a two year mandatory negotiation period. Thus, public safety licensees would not be required to relocate for at least five years. *Second MO&O*, 9 F.C.C.R. at 7802.

¹² See *Second MO&O*, 9 F.C.C.R. at 7802.

¹³ See *Second MO&O*, 9 F.C.C.R. at 7798.

¹⁴ See *Emerging Technology Report*, 7 F.C.C.R. at 6886.

**1. All BAS Applications Filed After January 30, 1995 Should Be
Granted on a Secondary Basis**

The Commission should declare that BAS applications filed after issuance of the *NPRM* in this proceeding — January 30, 1995 — will be granted only on a secondary basis, and that the cost of relocating such facilities will be the responsibility of the BAS licensee.¹⁵ This ruling will significantly reduce the costs associated with clearing the 2 GHz band for MSS operations because MSS licensees are required only to pay for relocating facilities that have primary status.¹⁶ Moreover, emerging technology licensees are not required to relocate facilities with secondary status and such facilities are not entitled to interference protection from emerging technology operations.¹⁷

Such a ruling would be consistent with the Commission's actions in the *Emerging Technology* docket.¹⁸ Specifically, the Commission determined that applicants for 2 GHz microwave frequencies would not receive primary status for any facilities proposed after adoption of the *NPRM* in the docket proposing to relocate incumbent microwave licensees to clear spectrum for PCS use.¹⁹ The Commission should adopt a similar policy with regard to

¹⁵ See *Emerging Technology Report*, 7 F.C.C.R. at 6886, 6891. The Commission has already determined that, after January 16, 1992, FS licenses would be granted on a secondary basis only. *Emerging Technology Report*, 7 F.C.C.R. at 6891.

¹⁶ *Cost Sharing Report*, 11 F.C.C.R. at 8868.

¹⁷ *Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, *Notice of Proposed Rule Making*, 11 F.C.C.R. 1923, 1964 (1995); *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, *Notice of Proposed Rule Making*, 7 F.C.C.R. 1542, 1545 (1992) ("*Emerging Technology NPRM*").

¹⁸ See *Emerging Technology Report*, 7 F.C.C.R. at 6891-92.

¹⁹ *Id.*

BAS operations in the bands referenced in the initial notice in this docket. BAS licensees were on notice that relocation was imminent and could have proposed facilities on bands not assigned to MSS. Accordingly, BAS facilities proposed after adoption of the *NPRM* in this docket should be afforded secondary status and MSS licensees should not be obligated to pay the relocation costs associated with such facilities.

2. The Voluntary Negotiation Period Should Commence Upon Grant of the First 2 GHz MSS License

Although the voluntary negotiation period traditionally commences upon acceptance of applications from the emerging technology providers, such as MSS licensees, the voluntary negotiation period associated with clearing 2 GHz spectrum for MSS use should commence once the first MSS license has been granted. *FNPRM* at ¶ 78. If the voluntary negotiation period commences with the mere acceptance of applications, the period likely will expire with only minimal negotiations because potential MSS licensees will not want to incur relocation costs unless they are assured of a license. By changing the triggering date for voluntary negotiations to initial license grant, the Commission will improve the quality and number of negotiations that take place between incumbents and MSS licensees and encourage successful completion of such negotiations.

Moreover, unlike 2 GHz microwave relocation associated with PCS, MSS licensees must engage in a two-step relocation process. FS and BAS licensees generally cannot share spectrum (*FNPRM* at ¶ 69). Thus, because the Commission has decided to clear spectrum for MSS by relocating BAS operations to the 2025-2130 MHz band (*First Report* at ¶¶ 30-33), FS licensees must be cleared from the 2110-2130 MHz band before BAS relocation can commence. *First Report* at ¶ 32; *Further Notice* at ¶¶ 69-70. Once the relocation of FS licensees from 2110-2130 MHz has been completed, MSS licensees can then commence the second relocation phase which

entails relocating incumbent BAS licensees to 2025-2130 MHz. Accordingly, BellSouth urges the Commission to change the triggering date for the voluntary negotiation period to the grant of initial MSS licenses.²⁰

B. The Modifications Made to Relocation Procedures in the *Microwave Cost-Sharing* Docket Should Be Equally Applicable to MSS

BellSouth supports extension of many of the rules established in the *Microwave Cost-Sharing Proceeding*, WT Docket No. 95-157, to MSS. Specifically, MSS licensees should be required to provide incumbent BAS and FS licensees with comparable facilities as defined in WT Docket No. 95-157 and should be required to share the costs associated with clearing spectrum for MSS use.

1. Comparable Value Should Be Based On Communications Throughput, System Reliability, and Operating Costs

BellSouth opposes any proposal that takes the value and age of existing equipment into account in determining the costs associated with involuntary relocation. *FNPRM* at ¶¶ 70, 80. In the *Emerging Technology* docket, the FCC made clear that incumbent licensees should not have their operations disrupted or suffer adverse economic consequences as part of the spectrum clearing process.²¹ To prevent adverse economic consequences, the Commission required that incumbents be relocated to comparable facilities.²² Numerous commenters urged the Commission to take the age and value of the existing equipment into consideration when determining

²⁰ It should be noted that, because the sunset date for MSS relocation obligations is tied to commencement of voluntary negotiations, any change to the trigger date for such negotiations also will change the sunset for relocation obligations. BellSouth supports the sunset of MSS relocation obligations ten years after the grant date of the first MSS license.

²¹ *Third Report*, 8 F.C.C.R. at 6594-95.

²² *Emerging Technology Report*, 7 F.C.C.R. at 6890; *Third Report*, 8 F.C.C.R. at 6591.

comparable facilities. Nevertheless, the Commission declined to factor age and value into the equation for determining comparable facilities. Instead, the Commission determined that a replacement facility would be comparable only if it is equivalent to the original facility with respect to (i) communications throughput, (ii) system reliability, and (iii) operating costs.²³ There is no reason for adopting a different definition for purposes of this proceeding.

PCS licensees were required to relocate incumbent 2 GHz microwave licensees to comparable facilities, as defined above. Because MSS will compete directly with PCS, regulatory parity requires that the relocation standards imposed on MSS and PCS licensees be similar. If MSS licensees are allowed to factor age and value in determining what constitutes a comparable facility, they will be competitively advantaged *vis-a-vis* PCS licensees, at the expense of incumbent users. Such disparate treatment violates principles of regulatory parity.

2. MSS Licensees Should Be Required to Share the Costs Associated With Relocation

In its *Microwave Cost-Sharing* docket, the Commission determined that all emerging technology providers should be required to share the costs associated with clearing spectrum for the provision of new services.²⁴ BellSouth supports this determination and urges the Commission to clarify that, as an emerging technology service provider, MSS licensees must participate in a cost-sharing program similar to the one adopted for 2 GHz microwave relocation.²⁵ Under such a cost-sharing program, MSS licensees will be required to share the costs associated with

²³ *Cost Sharing Report*, 11 F.C.C.R. at 8838-44.

²⁴ *Cost Sharing Report*, 11 F.C.C.R. at 8870.

²⁵ *See Cost Sharing Report*, 11 F.C.C.R. at 8860-72.

clearing spectrum for MSS operations, including the costs already incurred by PCS licensees relocating FS licensees in the 2110-2130 MHz band.

Without a cost-sharing requirement, some MSS entities can benefit by waiting for other MSS entities to clear spectrum. The public interest would be served better if this "free rider" problem is eliminated. Cost-sharing does that. More importantly, cost-sharing creates incentives for the prompt roll-out of MSS.

Because interference standards have yet to be adopted, the Commission should not adopt detailed rules governing the mechanics of the MSS cost-sharing plan. Rather, the Commission should simply adopt a general rule specifying that all MSS licensees will be required to share the costs associated with clearing spectrum for MSS use. The mechanics of the cost sharing plan should be drafted after adoption of interference standards and incorporated into a future Notice of Proposed Rulemaking.

3. The Requirement That MSS Licensees Reimburse Incumbent BAS and FS Licensees For Involuntary Relocations Should Sunset Ten Years After Grant of the First MSS License

As the Commission has recognized, existing 2 GHz equipment should be completely amortized after ten years and the useful life of such equipment is only fifteen years.²⁶ Given that incumbent 2 GHz licensees have been on notice since 1992 that the 2 GHz band has been designated for use by emerging technologies and that incumbents will be forced to vacate the spectrum, BAS and FS licensees would not be significantly harmed if the MSS fiscal responsibility for involuntary relocations sunsets ten years after the first MSS license is granted. Any 2 GHz facilities built after 1992 were constructed with full notice that they were potentially subject to relocation. Other bands were also available for use for the provision of BAS and FS.

²⁶ *Emerging Technology NPRM*, 7 F.C.C.R. at 1545.

In any event, prior to the advent of digital television, the Commission determined that the useful life of equipment constructed as of 1992 would expire in 2007.²⁷ If the reimbursement obligation sunsets ten years after the first MSS license is granted, MSS licensees will be required to compensate BAS and FS licensees for any involuntary relocations that take place in 2007, given that the first MSS license has not yet been granted. Given the recent advent of digital television, the useful life of BAS equipment should expire long before this date. Finally, the ten year sunset will not significantly harm licensees even if they constructed facilities as recently as this year. Any such facilities will be fully amortized prior to the sunset of the MSS relocation obligations.

II. RECHANNELIZATION OF BAS SHOULD OCCUR ONLY AFTER ALL FIXED SERVICES HAVE BEEN RELOCATED

BellSouth generally supports the Commission's proposal to rechannelize the new BAS band (2025-2130 MHz) into seven channels of 15 MHz, with the new channelization plan becoming effective only after all FS licensees have been relocated. *FNPRM* at ¶ 65. FS signals in the 2110-2130 MHz band can propagate for up to 100 miles, and some specific BAS applications (such as mobile ENG operations) are itinerant in nature. Thus, it is nearly impossible to determine whether the operation of a particular BAS facility will interfere with a specific FS facility. Accordingly, the Commission has properly recognized that BAS and FS generally cannot share spectrum. *FNPRM* at ¶ 69.

Given the propagation characteristics of FS in the 2110-2130 MHz band and the itinerant nature of BAS operations, the Commission should not allow BAS operations to begin on the new band until all FS licensees have been relocated. The prohibition could be waived in cases where

²⁷ *Emerging Technology NPRM*, 7 F.C.C.R. at 1545.

all FS licensees within 100 miles of the outer boundary of proposed BAS operations have been identified and relocated. Any such waiver request should be placed on public notice, however, so that FS licensees that would be adversely affected by the proposal may oppose grant of the waiver.

III. MSS SHOULD BE ALLOWED TO SHARE SPECTRUM WITH FS LICENSEES, ONLY IF IT IS TECHNICALLY FEASIBLE AND THE AFFECTED FS LICENSEES CONSENT TO SUCH SHARING

BellSouth supports the Commission's proposal to permit MSS and FS licensees to share the 2165-2200 MHz band whenever possible. *FNPRM* at ¶ 73. Unlike the operations of BAS and FS over the same spectrum, MSS and FS licensees may operate on the same band without causing each other interference. Sound frequency coordination procedures should eliminate most interference concerns and permit joint operations over the same band. Accordingly, there is no reason to require an MSS licensee to relocate an FS incumbent if the incumbent is not subject to interference from the MSS operations.

IV. UNTIL TIA'S INTERFERENCE STANDARDS ARE ADOPTED, MSS LICENSEES SHOULD BE REQUIRED TO RELOCATE ALL REQUESTING FS LICENSEES, AND PAY ALL ASSOCIATED COSTS, PRIOR TO COMMENCING OPERATIONS

The Commission's rules do not require the relocation of incumbent FS licensees unless and until MSS operations would cause harmful interference. *First Report* at ¶ 42. The rules also prohibit MSS operations from commencing until all FCC licensees susceptible to interference are relocated. *Id.* For purposes of determining interference, BellSouth supports the Commission's proposal to adopt the interference standards currently under development at TIA. *FNPRM* at ¶ 77; *see First Report* at ¶ 42. Until these standards are adopted, however, an FS licensee should be entitled to relocation, with all costs borne by the MSS licensee, prior to commencement of MSS operations. Without these standards, there is no viable mechanism for determining whether a FS licensee is entitled to relocation. Once interference standards are adopted, an FS

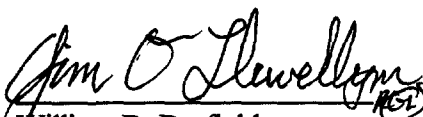
licensee will be entitled to relocation at an MSS licensee's expense only if the MSS licensee's operations would cause the FS licensee interference.

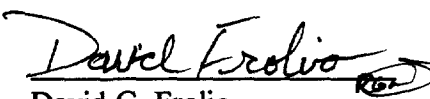
CONCLUSION

For the foregoing reasons, BellSouth urges the Commission adopt the policies expressed herein.

Respectfully submitted,

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